



TTAB

159577
Opposition

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

TOYOTA JIDOSHA KABUSHIKI KAISHA)
d/b/a TOYOTA MOTOR CORPORATION,)

Opposer)

v.)

SYNGENTA PARTICIPATIONS AG)

Applicant.)

Serial No.: 78/145,546

Filed: July 19, 2002

Mark: LEXUS

TOYOTA JIDOSHA KABUSHIKI KAISHA)
d/b/a TOYOTA MOTOR CORPORATION,)

and)

TOYOTA MOTOR SALES, U.S.A., INC.)

Opposers)

v.)

SYNGENTA PARTICIPATIONS AG)

Applicant.)

Serial No.: 78/185,538

Filed: Nov. 15, 2002

Mark: LEXXUS

**APPLICANT'S MOTION FOR ENTRY OF PROTECTIVE
ORDER AND RESPONSE TO OPPOSERS' REQUEST
FOR ENTRY OF PROTECTIVE ORDER**



11-19-2004

U.S. Patent & TMO/TM Mail Rcpt Dt. #74

Applicant would also move for entry of a Protective Order but object to the adherence to Opposers' language demands.

DILATORY TACTICS

It is obvious by examination of the exhibits attached to Opposers' request that they have adopted a course of delay and obstruction. Despite Applicant's request for a response

made by letter on June 1st & 28, 2004 (Ex. B) Opposers did not respond substantively until August 24, 2004, some 8 weeks later (Ex. B). Furthermore, Opposers have made no attempt to contact Applicant to discuss the protective order draft.

In order to expedite discovery, Applicant accepted the overwhelming majority of the language drafted by Opposers despite many objectionable and unfair terms therein.

Applicant also notes that a large amount of non-confidential materials in the possession of Opposers and requested by Applicant has NOT been produced by Opposers (See Ex. 1; letter requesting production of materials in Opposers' possession and not produced to date). It should be further noted that Applicant is not delinquent in its discovery responses.

OPPOSERS' DRAFT

Opposers claim that it cannot accept a commonly employed restriction on the admissibility of documents offered by them in these proceedings. Opposers submit:

"The single disputed issue remaining is the language of paragraph 8 of the attached proposed Protective Order that reads:

Deletions made from any Material in accordance with the terms of this Protective Order shall not affect the admissibility of any such material in evidence in this proceeding.

Applicant has objected to this language, and has proposed the following language:

Deletions made from any Material in accordance with the terms of this Protective Order shall not affect the admissibility of any such Material in evidence in this proceeding only upon consent of the other party or party not creating said deletions.

Opposers do not understand the reason for, or the intended result, of the proposed language, and Applicant's attorney has not offered an understandable explanation. "

The objection is obvious. Applicant requires that 'Deletions made from any Material by the offering party will affect its admissibility.' In an attempt to accommodate Opposers and to cobble a request from Opposers' language, Applicant required the consent of the non-offering party regarding admissibility if the offering party makes deletions. Rather than deleting this

provision, Applicant accepted its inclusion requiring the offering party not make deletions without the non-offering party's consent or its admissibility would then be affected.

This request is not only reasonable but commonly employed. Applicant cannot be forced to waive its rights to object to the admissibility of materials produced by Opposers.

Applicant would object to Opposers' language but would further move this Board for entry of a protective order either deletion of this provision or inclusion of the language (or intent) as suggested by Applicant.

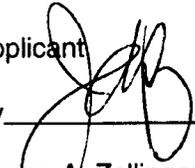
Applicant would further move this Board that Opposers be ordered to cease their dilatory tactics.

Applicant would also move this Board that Opposers be ordered to fully respond to Applicant's discovery requests so as not to require Applicant file a motion seeking to compel long overdue materials.

Respectfully submitted,

Applicant

By

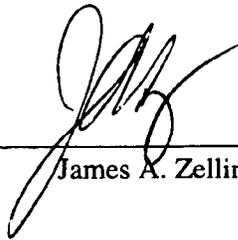

James A. Zellinger
Syngenta Crop Protection, Inc.
410 Swing Rd.
Greensboro, N.C. 27410

CERTIFICATE OF SERVICE

I, JAMES A. ZELLINGER, do hereby certify that I have mailed a copy of the above and foregoing RESPONSE TO OPPOSERS' MOTION FOR PROTECTIVE ORDER to Opposers' attorney of record as listed below by placing a copy of same in the U. S. Mail, properly addressed and postage prepaid, to:

David J. Kera
Oblon, Spivak, McClelland, Maier & Neustadt, P.C.
1940 Duke Street
Alexandria, VA 22314

on this the 14 day of OCT., 2004.



James A. Zellinger

EXHIBIT 1



James A. Zellinger
Trademark Counsel

Syngenta Crop Protection, Inc.
410 Swing Road
Greensboro, NC 27409
Tel: (336) 632-7835
Fax: (336) 632-2012

October 8, 2004

David J. Kera
Oblon, Spivak, McClelland, Maier & Neustadt, P.C.
1940 Duke Street
Alexandria, VA 22314

Re: *Toyota Jidosha Kabushiki Kaisha t/a Toyota Motor Corporation, and
Toyota Motor Sales, U.S.A., Inc., v. Syngenta Participations AG*
Opposition No.: 157,206
Your Ref. 238096US-213-21

Dear Mr. Kera,

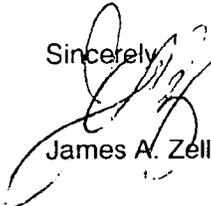
We cannot permit this delay to continue any further.

There are numerous outstanding documents that have not been produced to us such as those documents filed in conjunction with *Toyota v. Alements Lexus*, 102CV00013 (EDNY) which are not covered by any protective order.

These documents are well overdue.

Pursuant to 37 C.F.R. 2.120(e), this is Applicant's last attempt to resolve this blatant lack of production.

Sincerely,



James A. Zellinger

JAZ/sk



James A. Zellinger
Trademark Counsel

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October 14, 2004

Trademark Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 2327
Arlington, VA 22202

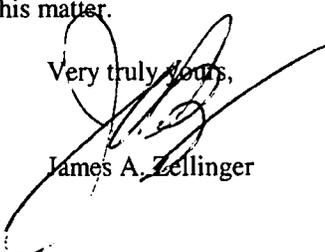
Re: *Toyota Jidosha Kabushiki Kaisha t/a Toyota Motor Corporation, and Toyota Motor Sales, U.S.A., Inc., v. Syngenta Participations AG.*
Consolidated Opposition Nos: 157,206 & 159,578

Dear Sirs:

Please find enclosed APPLICANT'S MOTION FOR ENTRY OF PROTECTIVE ORDER AND RESPONSE TO OPPOSERS' REQUEST FOR ENTRY OF PROTECTIVE ORDER pertaining to the above-referenced opposition. Please file in conjunction with same.

Thank you for your assistance with this matter.

Very truly yours,


James A. Zellinger

JAZ/sk
Encl.